The 1st July, 1987

No. 9/3/87-6Lab/3368.—In pursuance of the provision of section 17 of the Industrial Disputes Act, 1947 (Central Act No. XIV of 1947), the Governor of Haryana is pleased to publish the following award of Presiding Officer, Labour Court, Faridabad, in respect of the dispute between the workman and the management of M/s Raghbeer Machinery (P) Ltd., Chander Nagar, Gurgaon.

IN THE COURT OF SHRI A. S. CHALIA, PRESIDING OFFICER, LABOUR COURT, FARIDABAD

Reference No. 120 of 1983

between

SHRI PURAN CHAND, WORKMAN, C/O. S. K. GOSWAMI, LABOUR LAW ADVISOR, GURGAON AND THE RESPONDENT MANAGEMENT OF M/S RAGHBEER MACHINERY (P) LTD., CHANDER NAGAR, GURGAON.

Present —

Shri S. K. Goswami for the workman.

Shri M. P. Gupta, for the respondent management.

AWARD

This reference under section 10(1)(c) of Industrial Disputes Act, 1947 (Act No. 14 of 1947), as amended from time to time and latest by Act No. 49 of 1984 (hereinafter referred as the said Act) was made to this Court by the State of Haryana (Department of Labour),—*vdie* its endorsement No. ID/GGN/82/57719-24, dated the 30th December, 1983, to adjudicate upon the dispute of service matter covered by Second Schedule under section 7 of the said Act, risen between Shri Puran Chand, workman and the respondent management of M/s Raghbeer Machinery (P) Ltd., Chander Nagar, Gurgaon. According it has been registered as reference No. 12 of 1983.

2. Puran Chand was appointed by the respondent on 12th September, 1981, as a Milling Man and his services were terminated on 13th September, 1982. It is alleged that the same is wrong, illegal and *mala fide* and act of victimisation and act of un fair labour practice. Accordingly request was made to reinstate him into his job with continuity of service and further with full back wages.

. On notice, respondent appeared and contested the said claim. It has been denied that his services were terminated. Rather it has been pointed out that he was directed to report on duty,—*vide* letters dated the 15th September, 1982 and 21st September, 1982. Further according to it the contention is that this offer was rejected on 2nd November, 1982 and 27th November, 1982 also. According to it duty was given to him on 11th February, 1983, in compliance with directions dated the 10th February, 1983, issued by the Court and he himself had remained absent from duty and it is he who is responsible for the said back consequences and as a matter of fact he had started remaining absent from 12th September, 1982, By way of rejoinder workman has repeated his claim as well as allegations also. It has been alleged by him that he was not allowed to join his duty on 14th September, 1982 and management had not bothered to appear before the Labour Inspector to challenge his complaint. He has again requested to reinstate him into his job.

4. On the pleadings of the parties, the then learned Presiding Officer of the Labour Court had framed the following issue on 18th February, 1983 :—

(i) As per reference ?

From the side of respondent Shri Kishori Lal, Administrative Officer, Raj Pal Singh, Security Guard, and Mohinder had been examined. From the side of the workman Bhim Singh Sharma, Personnel Officer, Rajesh Kumar and Puran Chand have appeared. I have heard the parties as represented above. My findings on the issues are as under :—

Issue 1 :—

5. This case is of its own type where respondent management has been doing mischief from the very beginning with poor workman and has been adopting deceitful means to misguids the Government machinery also.

6. Puran Chand has claimed that he was appointed as a milling man on 12th September, 1981 and he was confirmed on 1st March, 1982 and his monthly pay was raised from Rs. 460 to Rs. 500. In support of it he has relied upon appointment letter Exhibit WW-3/1, dated the 12th September, 1981 and confirmation letter Exhibit WW-3/2, dated the 6th May, 1982. It could not be denied in any manner by the respondent.

7. However, trouble had started on 13th March, 1982, since it was alleged by Puran Chand that on that day he was threatened and pressurised to submit his resignation but he declined to do so and he was forcibly ousted from the factory and thereafter has never been allowed to work. Contrary to it, has been alleged by the respondent that he has been absent from duty with effect from 12th September, 1982 and there after has not turned up depsite of its two letters. In this manner there are 2 contrast view of the parties and as such attempt would be made to extract the truth therefrom. Puran Chand had made complaint Exhibit WW 3/3 to respondent on 13th September, 1982 alleging that he was detained in the office and threatened to submit his resignation and with great difficulty he had managed to come out. The same was despatched to the respondent,—*vide* registered letter through postal receipt Exhibit WW-3/4, and acknowledgement receipt is Exhibit WW-3/5. He had made another application Exhibit WW-2/1, dated the 14th September, 1982, to the respondent and that was delivered in the office on the same day. His third complaint Exhibit W-1 is dated 16th September, 1982, addressed to the Labour Inspector and that was delivered in the office on the same day. His next complaint dated the 11th October, 1982, is Exhibit W-2 again addressed to the Labour Inspector about the highhandedness of the respondent. On the other hand respondent had started a scandalous approach on the matter in dispute. According to it Exhibit M-3, dated the 15th September, 1982, is a letter addressed to Puran Chand directing him to report on duty and then there is second letter Exhibit M-5, dated the 21st September, 1982, again requiring him to report on duty. It appears that Labour Inspector as well as Labour Commissioner have summoned the respondent to reply the complaints made against it by Puran Chand. Exhibit M-7 are the comments before the Labour Officer, and Exhibit M-8 is the letter addressed to the Labour Commissioner again repeating the old calculated reply to the effect that Puran Chand was not resuming the duty.

8. On notice respondent had apeared before the Court on 10th February, 1983. Again offer was made to take Puran Chand on duty and he had agreed to so on the same day and on 22nd February, 1983, Puran Chand had alleged that management had not allowed him to join the duty and case was allowed to proceed further. On the file there is complaint dated the 14th February, 1983, of Puran Chand addressed to the Labour Court repeating the allegations to the effect that management has not allowed him to resume the duty.

9. Over and above the documentary evidence referred above, the parties have led oral evidence also. In my considered opinion the plea taken by Puran Chand is more convincing than that taken by the respondent. Now it is being alleged that he had stayed over the leave sanctioned. But on the file there is no iota of evidence to prove the same. The allegations are that he was not allowed to work with effect from 13th September, 1982 and it is found true from his complaint Exhibit WW-3/3 then Exhibit WW-2/1 and then W-1 and W-2 also.

The two letters Exhibit M-3 and Exhibit M-5 appear to be without any substance except to creat false evidence. The management appears to be adamant and even violated the directions of the Court since despite of the same he was not allowed to resume the work. Its conduct is quite clear from the statement of Clerk of Labour Inspector, Gurgaon. He has stated that respondent was summoned for 22nd September, 1982, 29th September, 1982, 7th October, 1982 and 11th October, 1982, but despite of the same no body had ap peared to reply the complaint made against it by Puran Chand. It is more than sufficient to condemn the respondent.

10. The plea taken by the respondent is that Puran Chand was not resuming duty with effect from 12th September, 1982. while on the other hand Puran Chand has been alleging that he is not being allowed to resume he duty. The plea taken by the respondent has been found a false one and on the force of their wealth and strength, they are preventing this poor workman to earn his wages just for survival.

11. It has been contended on behalf of the respondent that since then this reference has become infructuous as management had taken Puran Chand on duty as per directions of the Court and it was the implementation of entire petition award in the matter. This approach appears to be without any force as respondent deliberately did not allow Puran Chand to resume the duty. I am afraid that respondent would hardly amend its attitude and only an officer of iron hand would succeed in getting the job back to this poor workman.

12. In sequence of above discussion I accept the reference and reinstate Puran Chand into his job with continuity of service and further with full backwages. He was earning Rs. 500 per month and this amount is computed in his favour per month with effect from 13th September, 1982 till he is reinstated into his job.

Dated the 23rd April, 1987.

A. S. CHALIA,

Presiding Officer,
Labour Court, Faridabad.

Endst. No. 827, dated the 29th April, 1987.

Forwarded (four copies) to the Commissioner and Secretary to Government Haryana, Labour and Employment Department, Chandigarh, as required under Section 15 of Industrial Disputes Act.

A. S. CHALIA,

Presiding Officer,
Labour Court, Faridabad.

The 4th June, 1987

No. 9/2/87-6 Lab /3347.—In pursuance of the provision of section 17 of the Industrial Disputes Act, 1947 (Central Act No. XIV of 1947), the Governor of Haryana is pleased to publish the following award of Presiding Officer, Labour Court, Rohtak, in respect of the dispute between the workman and the management of M/s Mohan Spinning Mills, Rohtak.

BEFORE SHRI B. P. JINDAL, PRESIDING OFFICER, LABOUR COURT, ROHTAK

Reference No. 87 of 1985

between

SHRI OM PARKASH WORMKAN AND THE MANAGEMENT OF M/S. MOHAN SPINNING MILLS, ROHTAK.

Present : —

Shri Ram Chander Siwach, A.R. for the workmen.

Shri M.M. Kaushal, A.R. for the management.

AWARD

1. In exercise of the powers conferred by clause (c) of sub-section (1) of section 10 of the Industrial Disputes Act, 1947, the Governor of Haryana referred the following dispute between the workman Sarvshri Om Parkash, Dalel Singh, Mahabir Singh, Jagbir Singh and the management of M/s. Mohan Spinning Mills, Rohtak, to this Court, for adjudication,—*vide Haryana Government Gazette* Notification No. 23464-69, 23506-11, dated 31st May, 1985, 25901-6, dated 17th June, 1985, 35335-40, dated 29th August, 1985 —

"Whether the termination of services of S/Shri Om Parkash, Dalel Singh, Mahabir Singh and Jagbir Singh is justified and in order ? If not, to what relief are they entitled ?

2. After receipt of the order of references, notices were issued to the parties. The parties appeared. Four references bearing numbers 87, 89, 102 and 140 all of the year 1985 were ordered to be consolidated,—*vide* order dated 30th March, 1987. I further directed that proceedings shall be recorded in reference number 87 of 1985.

3. There are four petitioners ;Sarvshri Om Parkash, Mahabir Singh, Dalel Singh and Jagbir Singh. They were employed as Head Doffer, Winder, Cleaner and Reeles respectively. Their dates of appointment as per petitioners and the respondent are 4th December, 1978 (1st August, 1979, alleged by the respondent), 3rd December, 1977 (13th December, 1979, alleged by the respondent), 9th November, 1978 (9th August, 1979, alleged by the respondent), 23rd March, 1979 (1st August, 1980, alleged by the respondent) respectively. Wages drawn by them were Rs. 625, Rs. 520, Rs. 447 and Rs. 460 per month respectively.

4. Their common case is that on 5th November, 1984, the respondent unlawfully declared lock-out, which continued upto 3rd January, 1985 and on 4th January, 1985, the respondent put up a notice on the notice board that all the workers of the respondent mill should join their duty on or before 18th January, 1985. All of them alleged that they reported for duty before the said date but their entry was barred to the factory premises and last effort was made by them on 18th January, 1985 but the respondent did not allow them to resume their duties, regarding which they lodged a complaint with the Labour Inspector, Rohtak, but without any result. It is further alleged that their entry was barred to the factory premises, because the petitioners were active unionist, espousing the cause of the workforce and as such, the management was out to oust them willy-nilly and so, act of the respondent was an unfair labour practice, because by the said act, the management terminated the servces of the petitioners in flagrant disregard of the provisions of the Industrial Disputes Act, 1947 (hereinafter referred to as the Act). All of them have claimed reinstatement with continuity of service and full back wages.

5. Separate replies were filed by the respondent, but the refrain of the same is the same. Various preliminary objections have been taken and the same are that the present reference is bad in law, because the

reference is regarding the justifiability or otherwise of the alleged order of termination, though in fact the petitioners abandoned their employment of their own by not resuming their duties before the stipulated date i.e. 18th January, 1985, as per the settlement arrived at with the workforce. It is further alleged that a binding settlement was arrived at between the workforce and the management of the respondent mill in the month of April, 1984, which was to remain in force for a period of two years, whereunder the workforce agreed not to resort to "go-slow", "tool" down" or any such tactics but the workforce started indulging the these pernicious practices from the next month of May 1984, but even then, the management as a gesture of good will, again arrived at an amicable settlement with the workers in the month of May, 1984, but the said settlement was also not adhered to by the workers, who did not see the path of reason and started indulging in unhealthy practices resulting in sharp slump in production and so, the controversy was carried to the Labour Department Haryana, but the intervention of the Deputy Labour Commissioner, Sonepat and the Joint Labour Commissioner, Haryana, Chandigarh, proved of no avail. It is further alleged that during the years 1982 to 1984, functioning of the respondent mill was in complete disarray because of the *interse* rivalry between the various uhions operating in the respondent mill and as such, the workforce was a divided lot with divided loyalties and the bedraggled management was saddled with the arduous task of conciliating/negotiating the hyperbolic demands of the various unions, which never adhered to any settlement arrived at.

6. It is further denied that the entry of the petitioners was never barred on any date between 4th January, 1985 to 18th January, 1985 as alleged. On the other hand, it is asserted that none of the petitioners reported for duty upto the stipulated date as per the settlement arrived at between the workforce and the management. It is also denied that the petitioners were being ousted because of their union activities because it is not the knowledge of the respondent that any of the petitioners was any office bearer of any union of workers. Additional plea taken is that the petitioners remained gainfully employed after abandoning their employment. So, it is submitted that the references be answered against the petitioners.

7. On the pleadings of the parties, the following issues were framed in all the four references by me on 16th November, 1985, 31st October, 1985/28th November, 1985 and 13th January, 1986·—

(1) Whether the reference is bad-in-law ?OPR

(2) Whether the petitioner abandoned his employment of his own ? If so, to what effect ? OPR

(3) Whether the petitioner remained gainfully employed after his alleged termination ? OPM

(4) As per terms of reference.

The nature of oral and documentary evidence adduced in all the four references is the same, though of course serial number of witnesses examined and the exhibits put upon the documents may be different. So, I shall confine my discussion regarding oral and documentary evidence to reference number 87 of 1985. The petitioner examined WW-1 Shri Ranbir Singh, Clerk, office of the Labour Inspector, Rohtak, WW-2 Shri Jitender Kumar, WW-3, Shri Om Parkash one of the petitioners, WW-4 Shri Om Pal Singh, clerk, office of the Labour Officer, Rohtak, WW-5 Shri Sher Singh, Clerk, Labour Commissioner, Haryana, Chandigarh, WW-6 Shri Ram Chander Nain, Labour Inspector, Rohtak. The management examined MW-1 Shri Siri Krishan, Security Officer, MW-2 Shri G.C. Sharma.

8. Learned authorised representatives of the parties heard. My findings on the issues framed are as below ·—

9. *Issue No.* 1 *and* 2:—Since these issues defy separate discussion, so, they have been taken up together for discussion. The learned authorised representative of the respondent Shri Kaushal frocefully contended that since the terms of reference are confined to the justifiability or otherwise of the alleged order of termination in all the four references under adjudication and the controversy now before the Court is absolutely alien to the terms of reference, so, these references are bad in law and in support of his contention he cited **1984 II LLN 297 Sita Ram Vishnu Shirodhkar and Administrator, Govt. of Goa and others.** I would have gone along with Shri Kaushal in case entire evidence now produced before the Court would have justified the same.

10. There was suspension of manufacturing process in the respondent mill from 5th November, 1984 to 4th January, 1985. On the later date the respondent mill re-opened after settlement with the workforce. After which a notice was posted, copy of which is Ex. WW-3/8 enjoining upon the workforce to resume their respective duties up to 18th January, 1985, after signing the assurance letter. Case of all the our petitioners is that they approached the management on different dates between 4th January, 1985 to 18th January, 1985, but they were not allowed to resume their duties because their entry was barred to the factory premises. Their stand is that their entry was barred as they were office-bearers of the union affiliated to CITU working under the name and style of Mohan Spinning Mill Mazdoor Sangh. Their commoncase is that when they fail to get access to the factory premises, they were constrained to move the Labour Inspector, Rohtak, before whom they filed application in that behalf on 18th January, 1985, who issued notices upon the same to the management returnable for 23th January, 1985. Proceedings of 28th January, 1985 before the Labour Inspector are Ex. Y/2. A perusal of the same does not make it clear as to what order was passed but on

5th February 1985 Ex. MX/2 a response was sent by the respondent to the Labour Inspector that since all the petitioners have raised separate demand notices, he need not proceed with the complaint. So, the crucial question for determination is as to whether the petitioner did not approach the management to join their duties on any date between 4th January, 1985 to 18th January, 1985. All the four petitioners have deposed that they approached the management between these dates many a times to allow them to resume their duties but their entry was barred to the factory premises. These allegations have been vehemently denied by the respondent. The learned Authorised Representative of the petitioner Shri Ram Chander contended that had the petitioners not been keen to resume their duties, there was no question of their raising a demand notice on 19th January, 1985 and also filing a complaint with the Labour Inspector on 18th January, 1985, the last date upto which they were to resume their duties as per agreement with the workforce and as per notice pasted at the mill gate for the information of the workers. In that behalf, he has drawn my attention to letter of the management dated 25th January, 1985 sent to the Labour Inspector, Rohtak. In the said letter there is a mention of complaint by the petitioners dated 18th January, 1985. The Labour Inspector, who was examined as WW-6 in the reference of Om Parkash petitioner stated that the complaint W-1 was entered in the register on 21st January, 1985, though the same bad been received on 18th January, 1985. The case of the respondent is that this complaint was filed later on just to make out a case of victimisation and that the Inspector Shri Ram Chander Nain also admitted that the said complaint was not filed before him or his clerk, who had gone to Chandigarh but before some Clerk of the Labour Officer, Rohtak. The said clerk is Sher Singh WW-5. He stated that on W-1 complaint at point "A" receipt dated 18th January, 1985 was put by him and that on the said date the Labour Inspector and his Clerk were out on tour. It has also come in the statement of Shri G.C. Sharma, Factory Manager MW-2 that certain workers who had reported for duty within stipulated period were allowed to go home to collect their luggage and resume their duties afterwards. There is no gainsaying the fact that the settlement dated 3rd January, 1985 clearly provided that the entire workforce shall resume their duties on or before 18th January, 1985 after signing the assurance letter. In my opinion, there was no question of the petitioners not approaching the management to allow them to resume their duties between these dates and thereafter kick up the controversy that they were not allowed to do so by the management. They raised the demand notice on 19th January, 1985. I, see no reason for Ram Chander Nain in making a statement in the Court that the complaint of the petitioner was received in the Labour Office on 18th January, 1985. Their entry in the receipt register on 21st January, 1985 does not go to show that these were actually filed in the said office on 21st January, 1985. If, no complaint had been filed by the petitioner on 18th January, 1985, there was no question of any reference of the same in the letter of the management W-2 dated 25th January, 1985. The petitioners have alleged that their entry was barred as they were office bearers of most vocal union affiliated to CITU. This contention is countered on behalf of the management by arguing that out of 21 total office bearers of the said union, 18 were taken on duty. This fact was admitted by Shri Om Parkash one of the petitioners, who was examined as WW-3 in his own reference. Basing his contention upon this admission of Om Parkash petitioner Shri Kaushal learned Authorised Representative of the respondent contended that if the management had been out to bar the entry of active workers of the union of which the petitioners were office bearers, it could well bar the entry of 18 other office bearers, who were allowed to resume their duties including their President. Be that it may be so. The reasons for which the respondent did not allow the petitioners to resume their duties have not been placed before the Court, though the management's stand is that all the four petitioners never approached the management to allow them to resume their duties on any date between 4th January, 1985 to 18th January, 1985. In the respondent mill more than 1,400 workers are employed. The management is not prepared to accept the allegations that the entry of the petitioners was barred as they were active unionist. In such matters, the management should not have taken a rigid view of the settlement, under which, the respondent mill opened after it had remained closed for more than one month. What possible benefits the petitioners could draw in raising the demand notices on 19th January, 1985 and not approaching the management to resume their duties between the stipulated dates, defy all imagination. Even if, it may be believed that the story of the petitioners that they filed complaints separately before the Labour Inspector on 18th January, 1985, is not believed, even then, in the interest of amity and harmonious relations with the workforce, the management could well allow these four petitioners to resume their duties even during proceedings before the Labour Inspector before whom the management appeared and took up the stand on 23rd January, 1985 that since the petitioners did not resume their duties upto 18th January, 1985, they have no right to do so thereafter as per the settlement with the workforce. Shri G.C. Sharma, MW-2 Factory Manager admitted that during the proceedings before the Labour Inspector, no offer was made to the petitioners that they could resume their duties. Proceedings before the Labour Inspector started on 21st January, 1985 and the management sent its reply in writing on 25th January, 1985 and another reply on 5th February, 1985. So, in my opinion, the petitioners never abandoned their job by not resuming their duties between 4th January, 1985 to 18th January, 1985 and they did approach the management between these dates but for reasons best known to the management, they were not allowed to resume their duties. Even if, it be found that the petitioners never approached the management between these dates, the management could well make an offer to the petitioners before the Labour Inspector before the controversy erupted within a week of the expiry of the stipulated date. Had the management taken a charitable view of the whole matter, petitioners would have been spared from this unnecessary harassment and the management need not have to paid wages for no work taken. So, both these issues are answered against the management.

Issue No:

11. On this issue, there is no evidence on behalf of the respondent and as such, the same is answered against it.

Issue No. 4:

12. Now, the question would be as to what relief should be granted to the petitioners. No conclusive evidence has come before this Court as to whether the petitioners deliberately did not resume their duties between the stipulated dates of 4th January, 1985 to 18th January, 1985 or as to whether the management deliberately barred their entry during these dates to the factory premises, for reasons best known to it. Specially when the management has allowed most of the office bearers of the union, of which, the petitioners alleged they were office bearers. The petitioners have definitely not done any work from 18th January, 1985 on wards. More than two years have since lapsed. Ordinarily in a situation as in the present case when order of reinstatement is passed, full back wages are awarded but there is no straight jacket formula in awarding back wages. The Court has to keep in view the totality of the circumstances while awarding back wages. So, taken into consideration of the circumstances of the cases I award back wages to the extent of 60%. The petitioners are ordered to be reinstated with continuity of service and back wages to the extent of 60% till the date of reinstatement. The references are answered and returned accordingly with no order as to cost. A copy of this order be placed upon the file of references number 89,102 and 140 all of the year 1985.

Dated 2nd May, 1987.

B. P. JINDAL,
Presiding Officer,
Labour Court, Rohtak.

Endst No. 87-85/998, dated 15th May, 1987

Forwarded (four copies) to the Secretary to Government, Haryana, Labour and Employment Departments, Chandigarh as required under section 15 of the Industrial Disputes Act, 1947.

B. P. JINDAL,
Presiding Officer,
Labour Court, Rohtak.

The 22nd June, 1987

No. 9/4/87-6 Lab./3040.—In pursuance of the provision of section 17 of the Industrial Disputes Act, 1947 (Central Act No. XIV of 1947) the Governor of Haryana is pleased to publish the following award of Presiding Officer, Industrial Tribunal, Faridabad, in respect of the dispute between the workman and the management of M/s Mahesh Textiles Mills, 41/4, Bahalgarh Road, Sonepat.

BEFORE SHRI S. B. AHUJA, PRESIDING OFFICER, INDUSTRIAL TRIBUNAL, HARYANA, FARIDABAD

Reference No. 230, 231, 232 & 233 of 1983

between

THE MANAGEMENT OF M/S SONEPAT TEXTILE MILLS, 41/4, BAHALGARH ROAD; SONEPAT, GORI WEAVING FACTORY, 41/4, BAHALGARH ROAD, SONEPAT, SURINDER TEXTILES MILLS, 41/4, BAHALGARH ROAD, SONEPAT AND M/S MAHESH TEXTILES MILLS, 41/4, BAHALGARH ROAD , SONEPAT AND ITS WORKMEN

Present:—

Shri S.N. Solanki, Authorised Representative for the Workmen.

Shri Surinder Kaushal, A. R., for the Management.

AWARD

In exercise of the powers conferred by clause (d) of sub-section (1) of section 10 of the Industrial Disputes Act, 1947, the Governor of Haryana referred the following dispute between the Management of M/s Sonepat Textiles, 41/4, Bahalgarh Road, Sonepat, Gori Weaving Factory, 41/4, Bahalgarh Road, Sonepat,

Surinder Textiles Mills, 41/4, Bahalgarh Road, Sonepat and M/s Mahesh Textiles Mills, 41/4, Bahalgarh Road, Sonepat and its Workmen C/o President, Textiles Workers Union (Regd), CITU, Kathmandi, Sonepat to this Tribunal for adjudication :—

Whether the workmen should be given attendance allowance with arrears as per agreement dated 30th July, 1981? If so, with what details?

2. Four separate references were made by the Government and aforesaid references bearing Nos. 230/83, 231/1983, 232/1983 and 233/1983 were consolidated as they involved determination of similar questions of facts and law and further proceedings were taken in reference No. 230/1983 titled as "M/s Sonepat Textiles Mills, 41/4, Bahalgarh Road, Sonepat *vs* Its Workmen". This award would dispose of all the aforesaid references.

3. The case of the petitioners is that a settlement was signed between the Management and the workmen's representative before Labour-cum-Conciliation Officer, Sonepat under section 12(3) of the Industrial Disputes Act, 1947 (hereinafter referred to as the Act) on 30th July, 1981 whereby the workers were allowed Rs. 10 per month on completion of 22 days of working and Rs. 115 per month on completion of 26 days of working. This incentive i.e. attendance allowance was provided to the workers to secure better attendance of the workers. The management paid this amount but later on stopped it. Whereupon the workers raised demand by serving demand notice and prayed that they should be allowed this attendance allowance.

4. The management filed written statement and controverted the claim of the workmen. They took the plea that the dispute has not been espoused by the substantial number of workers and as such the reference was incompetent. On merits it was pleaded that the settlement was valid upto July, 1982 and said settlement was terminated by serving notice to the workers and as such the workers were not entitled to any benefit out of the said settlement. In nutshell it was pleaded that the settlement has lost its significance after the expiry of its period of operation and was not legally enforceable.

4. On the pleadings of the parties, the following issues were settled by my predecessor:—

(1) Whether the workmen should be given attendance allowance with arrears as per agreement dated 30th July, 1981? If so, with what details? OPW

(2) Whether the present dispute has been espoused by substantial number of workmen? OPW

(3) Whether after expiry of the agreement, the workers are not entitled to any benefit as pleaded? OPM

5. The workmen examined Shri Bal Karan WW-1 and Sudershan WW-2. Besides this Krishan Kumar WW-3 and Karan Singh WW-4 were tendered for cross-examination. The Management examined Shri Ram Avtar Proprietor of the respondent firm.

6. I have heard Shri S.N. Solanki, Authorised Representative for the workmen and Shri Surinder Kaushal, Authorised Representative for the Management and perused the record. My findings on the aforesaid issues are as under:—

Issue Nos. 1 and 3 :

7. Both these issues are interconnected and would be discussed together.

8. There is no dispute that settlement under section 12(3) was reached between the workmen and the Management before Labour-cum-Conciliation Officer, Sonepat on 30th July, 1981. That settlement was valid for one year i.e. upto July, 1982. According to the terms of settlement attendance allowance at the rate of Rs. 10 per month and Rs. 15 per month was allowed to workers on completion of particular numbers of working days in a month in order to secure better attendance. It is admitted fact that the Management had been paying this attendance allowance to the workers during the currency of the settlement but later on Management stopped payment. The copy of the settlement is Ex. M-1 on the record.

9. The learned Authorised Representative of the workmen contended that settlement Ex. M-1 has not been terminated by the Management by serving notice in accordance with law and as such the terms of settlement remain binding on the parties even after the expiry of its period. His argument is totally devoid on merit. Section 19(2) of the Act deals with period of operation of settlement. The provision reads as under:—

19. Period of operation of settlements and awards:—

(1) ×× ×× ×× ××

(2) Such settlement shall be binding for such period as is agreed upon by the parties, and if no such period is agreed upon, for a period of six months from the date on which the memorandum of settlement is signed by the parties to the dispute, and shall continue to be binding on the parties after expiry of the period aforesaid, until the expiry of two months from the date on which a notice in writing of an intention to terminate the settlement is given by one of the parties to the other party or parties to the settlement.

(3)	XX	XX	XX
(4)	XX	XX	XX
(5)	XX	XX	XX
(6)	XX	XX	XX
(7)	XX	XX	XX

The obvious intendment of sub section (2) of Section 19 of Act is that every settlement reached between the parties shall continue to be binding upon the parties even after the expiry of period of settlement until one of the parties expresses its intention to terminate the settlement by notice in writing to other party. The plain purpose of the legislature was to provide for a continuance of the settlement until its termination was manifested in the prescribed manner so that there should be no disturbance of industrial peace until then. In our instant case, the Management has terminated the settlement by issuing notice. The copies of the notice are Ex. M-2 M-3 M-4 and M-5. The notice was issued on 25th June, 1982. Even Bal Karan WW-1 has admitted in examination that notice was given by the Management before the expiry of period of one year. Thus the Management by serving valid notice had terminated the settlement in accordance with law. Hence according to the provisions of Section 19 (2) of the Act, the settlement not legally remains binding on the parties after the expiry of two months from the date on which notice in writing to terminate the settlement was given by the Management. In other words the workmen are not entitled to attendance allowance after 25th August, 1982. It is undisputed that the workmen had been paid attendance allowance prior to this period by the Management.

9. Even otherwise the workmen had not adduced any evidence to justify their demand. They had relied upon past settlement which had expired. Ram Avtar MW-1 on the contrary deposed that the payment of attendance allowance did not bear any fruitful result and as such the settlement was terminated by them on the expiry of its period. He further stated that the respondent firms i.e. M/s Sonepat Textile Mills suffered loss to the tune of Rs. 81012.00 whereas Surender Textiles suffered loss to the extent of Rs. 26398.00 and Mahesh Textiles Mills suffered loss amounting to Rs. 13660.00 during the year 1982-83. His statement was not at all challenged in cross-examination and as such there are no reasons to disbelieve Ram Avtar MW-1. The copies of balance sheet produced on record are Ex. M-6 to M-8. The net result is that the workmen are not entitled to attendance allowance after 25th August, 1982. The issues are answered against the workmen accordingly.

Issue No. 2:

10. The learned authorised representative of the Management contended that the matter had not been validly espoused by the appreciable number of the workmen of the respondent's establishment. His contention was that the minute book or resolution where by the workmen have authorised the office bearers of the Union to raise the demands has not been produced and in the absence of any material evidence, it cannot be said that the Union had validly sponsored these demands. There is ample merit in h's contention. In case of Depak Industries Limited and another *V/s* State of West Bengal and others. 1975-I-LLJ page 293 (Calcutta High Court) it was observed that when the dispute is sponsored or espoused by a Union it seems to have been uniformly held by the Judicial decisions that when the authority of the Union is challenged by the employer, it must be proved that the Union has been duly authorised either by a resolution by its members or otherwise that it h as the authority to represent the workmen whose cause it is espousing".

11. The workmen had not adduced any evidence either oral or documentary to show that this dispute has been validly espoused or sponsored. Bal Karan WW-1 and Sudershan WW-2 had not stated a singal word about the espousal of the dispute by the workmen. In the absence of any material evidence either resolution of members or authorisation by substantial number of them. it cannot be said that the matter has been properly and validly espoused by substantial number of workmen of the establishment. The issue is answered in favour of the respondent.

12. In view of the finding on the aforesaid issues the workmen are not entitled to any relief. The award is passed accordingly with no order as to cost.

Dated the 30th March, 1987.

S.B. AHUJA,
Presiding Officer,
Industrial Tribunal, Haryana,
Faridabad.

Endst. No. 379, dated 31st March, 1987.

Forwarded (four copies) to the Financial Commissioner and Secretary to Government, Haryana, Labour and Employment Departments, Chandigarh, as required under Section 15 of the Industrial Disputes Act, 1947.

S. B. AHUJA,

Presiding Officer,
Industrial Tribunal, Haryana,
Faridabad.

No. 9/4/87-6Lab /3056—In pursuance of the provision of Section 17 of the Industrial Disputes Act, 1947 (Central Act No. XIV of 1947) the Governor of Haryana is pleased to publish the following award of Presiding Officer, Industrial Tribunal, Faridabad in respect of the dispute between the Workman and the management of the Secretary, Haryana Government, H.S.E.B., Chandigarh and Chief Engineer, Thermal H.S.E.B., P.T.P. Panipat.

BEFORE S.B. AHUJA, PRESIDING OFFICER, INDUSTRIAL TRIBUNAL, HARYANA, FARIDABAD

Reference No 500/1983

between

SHRI RAM CHANDER WORKMAN, SON OF SHRI RAMJI LAL, C/O RAO MAKHAN LAL MAZOLLA, MUKTABAD, VILLAGE AND POST OFFICE, REWARI, DISTRICT MOHINDERGARH, AND THE MANAGEMENT OF M/S SECRETARY, HARYMNA GOVERNMENT, H.S.E.B., CHANDIGARH AND CHIEF ENGINEER, THERMAL H.S.E.B., P.T.P. PANIPAT.

Present.—

Shri S.S. Gupta, Authorised Representative for the workman.
Shri S.S. Sirohi, Authorised Representative for the Management.

AWARD

In exercise of the powers conferred by clause (d) of sub-section (1) of Section 10 of the Industrial Disputes Act, 1947 (hereinafter referred to as the Act), the Governor of Haryana referred the following dispute between Shri Ram Chander Workman and the Management of M/s. Secretary Government of Haryana, Haryana State Electricity Board, Chandigarh and (2) Chief Engineer, Thermal, Haryana State Electricity Board, P.T.P., Panipat to this Tribunal for adjudication :—

Whether termination of services of Shri Ram Chander was justified and in order ? If not, to what relief is he entitled ?

On receipt of order of reference, notices were issued to the parties. The parties appeared.

2. The case of the petitioner is that he was appointed as Security Officer on 23rd March, 1975 in Central Store, H.S.E.B., Panipat in the scale of Rs. 250—450 but the respondent chose to terminate his services,—*vide* order dated 25th August, 1982. He challenged the order terminating his services being illegal, unjustified and violative of provisions of Section 25-F of the Act. He prayed for reinstatement with full back wages and continuity of service.

3. The claim of the petitioner was controverted in the written statement by the Management. It was admitted that the workman was appointed as Security Officer in the year 1975 on ad-hoc basis with effect from 23rd March, 1975. He was allowed to continue on same terms and conditions upto 26th August, 1982. The service of the workman was contractual and his contract of service was renewed after every six months. It was pleaded that contract of service of the workman ceased on 25th August, 1982 and was not renewed thereafter and as such termination of service of the workman was under the contract of service and was not in any manner violative of Section 25-F of the Act. Hence the respondent's case was that termination of service of the petitioner was legal and according to the terms and conditions of service and the workman is not entitled to reinstatement.

4. Besides the plea was taken that the Haryana State Electricity Board is a corporate body and can be sued in its name but has not been impleaded as party in this case and as such the reference was bad for non-joinder of necessary parties and the reference was not maintainable against the Secretary, Haryana State Electricity Board under Section-82 of Electricity (Supply) Act, 1948. The plea was also taken, the present reference is barred by the principle of resjudicata and this Tribunal has no jurisdiction to entertain this reference.

5. In rejoinder filed by the petitioner, he reiterated his stand and also pleaded that he was kicked out by way of stigma on the basis of false and frivolous theft case which ultimately resulted in the acauittal of the claimant.

6. On the pleadings of the parties the following issues were framed by Shri R.N. Batra, my predecessor :—

(1) Whether the reference is bad for non-joinder of necessary party as pleaded ? OPM

(2) Whether the reference is not maintainable under section 82 of the Electricity Supply Act, 1948 ? OPM

(3) Whether the Industrial Tribunal has no jurisdiction to try the present reference ? OPM

(4) Whether the reference is barred by the principle of resjudicata as pleaded ? OPM

(5) Whether the claimant was appointed for six months as pleaded ? OPM

(6) Whether the termination of service of Shri Ram Chander was justified and in order ? If not, to what relief is he entitled ? OPM

7. The petitioner examined himself as WW-1 whereas the respondent examined Mukesh Jaiswal Assistant, MW-1.

8. I have heard Shri S.S. Sirohi, Authorised Representative for the Management and Shri S.S. Gupta, Authorised Representative for the workman and perused the record on the file. My findings on the aforesaid issues are as under :

Issue Nos 1 and 2 :

9. It was argued by the learnedAuthorised Representative for the Management that Haryana State Electricity Board is corporate body and can be sued only its name as laid down under Section 12 of the Electricity (Supply) Act, 1948. His contention was that the Board has not been impleaded as party and as such the reference was bad. Besides it was argued that no suit can be filed against the Secretary of the Board by virtue of Section 82 of the Electricity (Supply) Act, 1948. The contention advanced by him can not be accepted. The technical rules of Civil Procedure Code are not applicable in industrial adjudication. This reference can not be termed suit. The services of the claimant/petitioner were terminated by the Secretary Haryana State Electricity Board, Chandigarh and as such notice was served on him and Chief Engineer, Thermal, Haryana State Electricity Board, Panipat which led to making of this reference by State Government. It is undisputed that the Secretary, Haryana State Electricity Board has been sued in official capacity and this reference cannot be said to be bad for non-joinder of necessary party. The reference against the Secretary Haryana State Electricity Board, Chandigarh is also maintainable as services of the petitioner were terminaterd by him. The issues are answered against the Management.

Issue Nos. 3 and 4 :

10. The learned Authorised Representatives for the Management contended that the workman filed a Civil Suit No. 212/82 in the Court of First Class Judge, Panipat against termination of his services and suit was dismissed on 19th October, 1982 and as such this Tribunal has no jurisdiction to try the present reference and the same is also barred by the principle of res-judicata. This argument has got no merit. It is true that according to observations made by the Full Bench of Punjab and Haryana High Court in case of Sukhi Ram *versus* State of Haryana, ILR (1982) 2 P. & H., the claimant have two alternative remedies of either approaching the civil court or the Labour Court/Tribunal for redress of grievances. The civil suit filed by him was withdrawn at the initial stage. The suit was for permanent injunction for restraining the respondent from terminating his services as it is apparent from the copy of the plaint Exhibit M-23 and that suit was withdrawn by him on 19th October, 1982.—*vide* copy of judgment Exhibit M-24. The suit was not decided on merit . The filing of civil suit and then its withdrawal at initial stages would not mean that the claimant has exercised his discretion and opted for the choice of forum in redress of his grievances. He is not debarred from seeking a reference of his claim to the Labour Court/Tribunal—For such view support is sought from the dexision of Hon'ble Mr. Justice I. S. Tiwana in case of Ferozepur Central Co-operative Bank Ltd. *versus* Labour Court, Bhatinda and another. (Volume 67 P. J. R.) 1985 page 367. The present reference cannot be held to be barred by principles of res-judicata because earlier suit was not decided on merit. Both these issues are answered against the Management.

Issue Nos. 5 and 6 :

11. Shri S. S. Gupta, learned Authorised Representative for the workman contended that (1) the workman had been retrenched from employment in flagrant distegard of Section 25-F of the Act. As such his termination of service was contrary to law.

(2) The order of termination of service of the petitioner attaches stigma and the same has been passed without serving any charge-sheet and without holding any domestic enquiry against him and as such was illegal and unlawful.

12. On the other hand Shri S. S. Sirohi, Law Officer of the Management argued that termination of service of *ad hoc* employee was in accordance with in terms of appointment. It was termination simpliciter and such the same was legal.

13. After considering the argument advanced by both the sides I am of the opinion that learned Authorised Representative for the workman is on firm footing, Exhibit M-1 is the first appointment letter dated 12th March, 1975. The petitioner was appointed as Security Officer on *ad hoc* basis for a period of not exceeding six months or till such earlier date the candidate selected for regular appointment become available. He was allowed to continue on same terms and conditions and ultimately his services were terminated,—*vide* order dated the 25th August, 1982 Exhibit M-18. The final order of discharge simpliciter was passed on 15th September, 1982,—*vide* copy of order Exhibit M-20, Exhibit M-2 to M-17 are copies of appointment letters whereby the petitioner was allowed to continue in service during the intervening period. Admittedly the claimant had more than one year of continuous service. No retrenchment compensation as stipulated in Section 25-F of the Act was paid to him before terminating his services. The termination of his services amounts to retrenchment as defined in Section 2(00) of the Act. Analysing the definition in Section 2(00) of the Act in State Bank of India *v.* N. Sundaramoney (*Supra*) 1976-I LLJ page 478, Their Lordships held as under :—

> "Termination .....for any reason whatsoever are key words. Whatever the reason, every termination spells retenchment. So the sole question is has has the employee's service been terminated ? .....A termination takes place where a term expires either by the active step of the Master or the running out of the stipulated term ..... Termination embraces not merely the act of termination by the employer, but fact of termination, howsoever, produced. .... an employer terminates employment not merely by passing an order as the service runs. He can do so by writing a composite order, one giving employment and the other ending or limiting it. A separate, subsequent determination is not the sole magnetic pull of the provision. A pre-emptive provision to terminate is struck by the same vice as the post appointment termination."....See in Hindustan Steel Limited and State of Orissa and other, 1977 I-LLJ page 3.

Mere fact that the service of the employee came to an end by efflux of time would not take it out of purview of retrenchment. To write into order of appointment the date of termination confers no miksha from Section 25-F of the Act. The termination of service of the petitioner thus clearly amounts to retrenchment as held in N. Sunderamoney case (*Sapra*) and also as laid down in Hindustan Steel Limited *versus* State of Orissa and others, 1977-I-LLJ page 1 (Supreme Court). Thus in this case the termination of service even if it is in terms of contract, is retrenchment. The mandatory provisions of section 25-F have not been complied with . The retrenchment of the petitioner is contrary to law.

14. The next question for considering is whether the termination of the employee is termination simpliciter or this order attaches stigma to the employee concerned.

> 15. "It is now well settled that the mere form of the order is not sufficient to hold that the order of termination was innocuous and the order of termination of the services of a probationer or of an *ad hoc* appointee is termination simpliciter in accordance with the terms of the appointment without attaching any stigma to the employee concerned. It is the substance of the order, i.e.,the attending circumstances as well as the basis of the order that have to be taken into consideration. In other words when an allegation is made by the employee assailing the order of termination as one based on misconduct, though couched in innocous terms, it is incumbent on the Court to lift the veil and to see the real circumstances as well as the basis and foundation of the order complained of. In other words, the Court, in such case, will lift the veil and will see whether the order was made on the ground of misconduct, inefficiency or not. "
>
> *See*—in case of Jarnal Singh and others and State of Punjab and others 1986-II-LLN page 364 (Supreme Court).

16. In the instant case, though the impugned order was made under the cloak of an order of termination simpliciter according to the terms of the employment, yet considering the attendant circumstances Which are the basis of the said order of termination, there is no iota of doubt in holding that order of termination has been made by way of punishment. This position is clear from the stand taken by the Management before Labour-cum-Conciliation Officer when the matter was taken up by him on demand notice served by the workman. Copy of the proceedings of the Conciliation Officer are Exhibit W-1 and W-2. His report clearly shows that the Management has passed impugned order of termination because the workman was involved in theft of furnace oil and the case has been registered with police against him. Besides annual

confidential reports were not upto the mark and as such the termination order was passed against him, on this ground. Even MW-1 Mukesh Jaiswal had admitted in cross-examination that there were complaints against the claimant and the case of theft of furnace oil was registered against him. It is worthwhile to note that the petitioner has been acquitted by Judicial Magistrate, First Class, Panipat,—*vide* copy of judgment, dated the 21st May, 1984 in said theft case registered against him. It is also to be noted that aggrieved employee was not afforded an opportunity of hearing before passed said order of termination. He was not served any charge-sheet and no domestic enquiry was held againt him. Thus impugned order of termination of service was by way of punishment and is against the principles of natural justice. The same is invalid on this ground also.

17. In the result I hold that the termination of service of Shri Ram Chander is neither legal nor justified and the same is set aside. He is reinstated with full back wages and continuity of service. The award is passed accordingly in favour of the workman. No order as to cost.

Dated, the 31st March, 1987.

S. B. AHUJA,

Presding Officer,
Industrial Tribunal , Haryana
Faridabad.

Endst. No. 380, dated the 31st March, 1987.

Forwarded (four copies) to the Financial Commissioner and Secretary to Government, Haryana, Labour and Employment Departments, Chandigarh as required under section 15 of the Industrial Disputesrt Act, 1947.

S. B. AHUJA,

Presiding Officer,

Industrial Tribunal , Haryana,
Faridabad.

No. 9/4/87-6Lab./3621.—In pursuance of the provision of Section 17 of the Industrial Disputes Act, 1947 (Central Act No. XIV of 1947), the Governor of Haryana is pleased to publish the following award of Presiding Officer, Industrial Tribunal, Faridabad in respect of the dispute between the workman and the management of M/s. National Council for Cement and Building Material, Mathura Road, Ballabgarh.

BEFORE SHRI S.B. AHUJA, PRESIDING OFFICER, INDUSTRIAL TRIBUNAL, HARYANA FARIDABAD

Refernce No. 213 of 1986

between

SHRI KISHORI LAL, C/O SHRI DARSHAN SINGH, GENERAL SECRETARY, AITUC, FARIDABAD INDUSTRIAL WORKERS UNION, MARKET NO. 1, N.I.T., FARIDABAD, AND THE MANAGEMENT OF M/S NATIONAL COUNCIL FOR CEMENT AND BUILDING MATERIAL, MATHURA ROAD, BALLABGARH

Present :—

Shri Darshan Singh, A.R. for the workman.

Shri C.M. Lal. A.R. for the Management.

AWARD

In exercise of the powers conferred by clause (d) of sub-section (1) of section 10 of the Industrial Disputs Act, 1947, the Governor of Haryana referred the following dispute between Shri Kishori Lal, Workman and the Management of M/s. National Council for Cement and Building Material, Mathura Road, Ballabgarh, to this Tribunal for adjudication :—

"Whether the termination of service of Shri Kishori Lal is justified and in order ? If not, to what relief is he entitled ?"

2. Notices of the reference were sent to the parties who appeared.

3. The Petitioner's case is that he was appointed as Mali in July, 1982, but the respondent illegally terminated his service on 21st August, 1986 without any reason. He prayed for reinstatement with full back wages and continuity of service.

4. The respondent contested the case of the petitioner. It was *inter alia* pleaded that the Government of Haryana is not the 'Appropriate Government' within the meaning of Section 2(a) of the Industrial Disputes Act vis-a-vis, the Management Institute and this Tribunal has no jurisdiction to entertain and adjudicate upon the present reference. It is not necessary to reproduce the other plea taken in the written statement because the reference is being disposed of otherwise than on merits.

4. On the pleadings of the parties, the following preliminary issue was settled :—

(1) Whether the Government of Haryana is not an appropriate Government to make the reference in this case ? OPR

5. The Management produced on record copy of award, dated 8th March, 1983 passed by Shri M.C. Bhardwaj, the then Presiding Officer, Industrial Tribunal, Haryana, Faridabad wherein he has held that Central Government was the 'appropriate Government' for Cement Industries *qua* the Management of M/s Cement Research Institute of India, Ballabgarh. Ex. M-2 is the copy of award dated 17th December, 1981 passed by Shri Hari Singh Kaushik, Presiding Officer, Labour Court to the same effect. Ex. M-3 is the copy of Cement Control Order, 1967 and Ex. M-4 is the copy of Cement Control (Third Amendment) Order, 1982. Ex. M-5 is the copy of memorandum issued by the Under-Secretary to Government of India, Ministry of Industry and Company Affairs which shows that Cement Research Institute of India, which is under the administrative control of Central Government has been re-designated as 'National Council for Cement and Building Materials'. Ex. M-6 is the copy of notification of 8th November, 1977 which shows that by notification under sub-clause (i) of clause (a) of section 2 of the Industrial Disputes Act, 1947, the Central Government has specified, for the purposes of that sub-clause, the controlled industry engaged in the manufacture or production of Cement, which has been declared as controlled industry under Section 2 of the Industrial (Development and Regulation) Act, 1951 (65 of 1951). Besides this Ex. M-7 is the copy of Memorandum of Association of the Society viz, National Council for Cement and Building Material.

6. The workman has not adduced any evidence

7. I have heard Shri Darshan Singh, Authorised Representative for the workman and Shri C.M. Lal, Authorised Representative for the respondent management and perused the record on file.

8. The learned authorised representative for the Management contended that for the purposes of this case the appropriate Government under Section 2(a)(i) of the Industrial Disputes Act, 1947 was the Central Government as Management Institute was covered under Cement Industry, i.e., controlled industry. There is ample merit in his contention. Section 2(a)(i) of the Industrial Disputes Act, 1947 states :—

(a) 'Appropriate Government, means—

"(i) in relation to any Industrial Disputes concerning any industry carried on by or under the authority of the Central Government or by a railway Company or concerning any such controlled industry as may be specified in this behalf by the Central Government. * the Central Government, and".

9. In order that the Central Government may be 'appropriate Government' in relation to controlled industry, two requirements are to be satisfied viz. (i) industry should be a 'controlled industry', and (ii) it should have been specified in this behalf, i.e., for the purpose of Section 2(a)(i) of the Industial Disputes Act, 1947. Both these requirements are fulfilled in this case. An industry engaged in the manufacture or production of cement and gipsum product is a controlled industry under the first Schedule to the Industries Development and Regulation Act, 1951. Besides this said industry has also been specified as controlled industry for the purposes of Section 2(a) (i) of the Industrial Disputes Act, 1947 by the Central Government—*vide* notification Ex. M-6 of Noember, 1977.

10. Shri Darshan Singh, learned Authorised Representative of the workmen cited the case of **Paritosh Kumar Pal** *V/s* **State of Bihar and others** 1984 Lab. T.C. 1254 (Patna High Court) and urged that situs of the employment of the workman would determine Tribunal's jurisdiction. This ruling is not applicable to the facts of this case. Besides this, he cited the case of **Marine Diesel Engine Project Dhurwa, Ranchi** *versus* **State of Bihar and others**, 1981-Lab. I.C. page 1370. **Vinod Ram** *versus* **Presiding Officer, 1st Labour Court, Ahmedabad and others**, 1980 Lab. I.C. 1191 and **Bihar Khadi Gramodyog Sangh Muzaffarpur** *versus* **State of Bhiar and others** 1977-Lab. I.C. page 466 and urged that the employee was employed within the jurisdiction of Haryana and as such, Haryana Government is the appropriate Government. The authorities cited by him have no bearing to determine controversy in this case.

11. Hence I come to the conclusion that Central Government is the "appropriate Government", for the cement industry vis-a-vis the respondent Management Institute. Therefore I held that this Tribunal has no jurisdiction to deal with the present reference. That apart Cement Research Institute of India which has now been redesignated as National Council for Cement and Building Material is under the administrative Centrol of the Government of India as is apparent from the memorandum Ex.M-5 dated 18th June, 1985. The workman may seek his remedy by moving appropriate Government. Therefore the reference is bad on above ground and I pass award accordingly.

S. B. AHUJA,

Dated the 28th April, 1987.

Presiding Officer,

Industrial Tribunal, Haryana,
Faridabad.

Endst. No. 480, dated the 30th April, 1987

Forwarded (four copies) to the Financial Commissioner and Secretary to Government, Haryana, Labour and Employment Departments, as required under Section 15 of the Industrial Disputes Act, 1947.

S. B. AHUJA,

Presiding Officer,

Industrial Tribunal, Haryana,
Fridabad.

No. 9/4/87-6Lab./3055.—In pursuance of the provisions of section 17 of the Industrial Disputes Act, 1947 (Central Act No. XIV of 1947) the Governor of Haryana is pleased to publish the following award of Presiding Officer, Industrial Tribunal, Faridabad, in respect of the dispute between the workman and the management of M/s Indira Iron and Steel Pvt. Ltd., Plot No. 103, Sector 24, Faridabad.

BEFORE SHRI S. B. AHUJA, PRESIDING OFFICER, INDUSTRIAL TRIBUNAL, HARYANA, FARIDABAD

Reference No. 28/1984

between

SHRI NAZIR, WORKMAN C/O HIND MAZDOOR SABHA, 29, SAHEED CHOWK NEELAM CINEMA, FARIDABAD AND THE MANAGEMENT OF M/S INDIRA IRON AND STEEL PVT. LTD., PLOT NO. 103, SECTOR-24, FARIDABAD

Present :

Shri Manohar Lal, A. R., for the workman.

Shri G. S. Chaudhary, A. R., for the management.

AWARD

1. In exercise of the powers conferred by clause (d) of sub-section (1) of section 10 of the Industrial Disputes Act, 1947, the Governor of Haryana referred the following dispute between Shri Nazir workman and the management of M/s Indira Iron and Steel Pvt. Ltd. Plot No. 103, Sector-24, Faridabad, to this Court, for adjudication:—

Whether the termination of services of Shri Nazir is justified and in order ? If not, to what relief is he entitled ?

2. An *ex parte* award was passed on 1st October, 1984 by Shri R. N. Batra, my predecessor and later on that award was set aside on the application moved by the workman on 3rd January, 1985 by order passed by Shri R. N. Batra, my predecessor.

3. The case of the petitioner is that he was employed as fireman in the respondent Company for the last 7 years and the respondent chose to terminate his services on 15th September, 1982 unlawfully in flagrant disregard of provisions of the Industrial Disputes Act, 1947 (hereinafter referred to as the Act. He prayed for reinstatement with all back wages.

4. The stand of the petitioner was controverted by the respondent. It was pleaded that the factory has since been closed permanently with effect from 24th December, 1982 and that name of the respondent has not been correctly mentioned in the reference. On merits, it was pleaded that the claimant was employed on 1st April, 1981 on daily wages of Rs. 16.50. He absented from duties without any intimation and abandoned his services. He even did not report for duty inspite of settlement, dated 28th October, 1982 under Section 12 (3) of the Act. In other words, it was pleaded that the respondent had never terminated the services of the workman.

5. On the pleadings of the parties, the following issues were settled by my predecessor :—

(1) Whether the factory has been closed with effect from 24th December, 1982 as pleaded ? OPM

(2) Whether the claimant did not raise any dispute with the Management as pleaded? OPM

(3) Whether the name of the respondent factory has not been correctly given as pleaded ? OPM

(4) Whether the claimant abandoned his job by his own conduct as pleaded ? OPM

(5) Whether the termination of service of Shri Nazir Ahmad was justified and in order ? If not, to what relief is he entitled ? OPM

6. The Management examined Shri G. K. Aggarwal, Partner MW-1. On the other hand, the workman examined himself as WW-1 and one Shri Hari Krishan as WW-2. I have heard Shri Manohar Lal, learned Authorised Representative for the workman and Shri G. S. Chaudhary learned Authorised Representative for the Management and gone through the record. My findings on the aforesaid issues are as under :—

Issue No. 1.

7. G. K. Aggarwal MW-1 in the partner of the respondent firm. He deposed that factory had been permanently closed with effect from 24th December, 1982 and intimation to this effect was sent to concerned authorities. His version is corroborated by letter Ex. M-1 addressed to the Superintendent, Central Excise, letter Ex.M-2 addressed to Inspector of Factories, Faridabad, letter Ex.M-3 addressed to Sub-Divisional Officer, Haryana State Electricity Board. Besides Ex. M-4 is also the copy of letter written by Sub-Divisional Officer, Haryana State Electricity Board wherein they had verified that electricity supply remained disconnected to the factory with effect from 27th December, 1982 onwards.

(8) On the contrary, Shri Nazir Ahmad MW-1 stated in examination chief that he has no knowledge whether the respondent factory is working or not. He could not deny whether the Respondent factory was lying closed.

9. I find no reasons to disbelieve the version of G. K. Aggarwal, Partner of the respondent firm that factory has since been closed with effect from 24th December, 1982 because his statement goes unrebutted. The Management had written various letters to authorities and informed them about the closure of the factory.

10. Learned authorised representative for the workman argued that the action of closing the factory by the Management was malafide and not a genuine affair. His argument has got no merit. There is ample evidence on the record as discussed above which has clearly established that the employer has since closed its factory. It is not for the Industrial Tribunal to enquire into motive for closure to find out whether the closure is justified or not as held in case between **Indian Hume Pipe Company Ltd., and their Workmen** 1969-I-LLJ page 242 (Supreme Court).

11. In view of the above discussion, it must be held that factory has been closed with effect from 24th December, 1982. The issue is answered in favour of the respondent-management.

Issue No. 2.

12. This issue was not pressed and is answered against the management.

Issue No. 3.

It was pointed out that correct name of the respondent firm is M/s Indira Iron Steel Company but the reference has been made in the name and style of M/s Indira Iron and Steel Pvt. Ltd. and as such it was alleged that the reference is bad. It is true that the name of the respondent has not been correctly mentioned but the workman cannot be blamed because no such plea was advanced before the Conciliation Officer when he took up the matter of demand notice served by the workman. The reference thus cannot be stated to be bad in law on this score. The issue is answred against the Management.

Issue Nos. 4 and 5.

14. G. K. Aggarwal MW-1, partner of the respondent firm deposed that the claimant was employed on 1st April, 1981 and had left the job on 2nd November, 1981. He produced attendance register Ex. M-5. He stated that the workman had worked for 180 days including Sundays and other holidays during the proceeding year to be calculated from the date he left the job, also admitted that the settlement was reached and the workman had worked for two days after the settlement.

15. On the contrary Nazir, workman WW-1 deposed that he had worked with the respondent from 1972 to 1982. He deposed that he never abandened the job but his services were illegally terminated. He alleged that he was not allowed to join duty even after the settlement reached before Labour-cum-Conciliation Officer. Hari Kishan WW-2 deposed that he had also worked with Nazir in the respondent factory during the period 1976 to 1982. He could not give any documentary proof to show that he had worked with the respondent factory.

16. On considering the evidence adduced by both the parties, I am of the opinion that the version of Shri G. K. Aggarwal MW-1 deserves to be accepted. His version is supported by the entries in the attendance register Ex. M-5, the genuineness of which could not be challenged. The workman Nazir clearly admitted in cross examination that he had no documentary proof to show that he had worked in the respondent factory prior to 1st April, 1981. It is worthwhile to note that the settlement took place on 28th October, 1982 before the Labour-cum-Conciliation Officer, Faridabad whereby the workman was directed to report for duty in the Company. This position is admitted by the workman in the cross-examination, it is also apparent that the workman after the settlement worked for only two days i.e, 1st Novemebr, 1982 and 2nd November, 1982 and thereafter absented himself as shown in the attendance register Ex. M-5. The workman's version is that he was refused to join duty by the Management, does not inspire confidence. Had the Management refused the workman to resume duty it would not have marked attendance of the workman for Ist November, 1982 and 2nd November, 1982. The only inference can be drawn that the workman worked for only two days after the settlement and again left the job. This aspect further gets support because the workman had settled his account with Management after taking his full and final dues on 11th March, 1983. He received Rs. 385 towards the settlement, dated 28th October, 1982 and reiterated that nothing was due to him from the Company. The receipt is Ex. M-6 and the workman has not denied his signatures thereon. His explanation that receipt Ex. M-6 pertained to *ex-gratia* amount is nothing but tissue of lies. The receipt Ex. M-6 clearly shows that the amount was received by him in full and final settlement of his claim.

17. In view of the above said discussion, I came to the conclusion that the workman had worked for less than 240 days with the respondent and as such was not entited to benefit of Section 25-F of the Act. It is also held that the workman had himself abandoned the job and thereafter settled his account by accepting the amount by receipt Ex. M-6. Consequently the workman is not entitled to any relief. The award is passed accordingly. There is no order as to costs.

S. B. AHUJA,
Presiding Officer,
Industrial Tribunal, Haryana,
Faridabad.

Dated the 30th March, 1987.

Endorsement No. 381, dated 30th March, 1987.

Forwarded (four copies), to the Financial Commissioner and Secretary to Government, Haryana, Labour and Employment Departments, Chandigarh, as required under section 15 of the Industrial Disputes Act, 1947.

S. B. AHUJA,
Presiding Officer,
Industrial Tribunal, Haryana,
Faridabad.

KULWANT SINGH,
Financial Commissioner and Secy.
to Government, Haryana, Labour and Employment
Departments.